IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/03/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.7584 of 2002

K.V.Singh,
No.IC-27159 P, Rank-Colonel,
Director Recruiting,
HQ Recruiting Zone,
Chennai-600009. .. Petitioner

-Vs-

1. Union of India,
Through the Secretary,
Govt. of India,
Ministry of Defence,
New Delhi-110011.

2. Military Secretary's Branch/MS(x),
Army Head Quarters, DHQ-P.O.,
New Delhi-110011. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus as stated therein.

For Petitioner :Mr.M.K.Sikdar
For Respondents:Mr.J.Madanagopal Rao,
Sr.Central Govt. Standing Counsel.

:O R D E R

By proceedings dated 22.3.2001, the first respondent-Union of India rejected the statutory complaint made by the petitioner against his non-selection from the post of Colonel to Brigadier, of course, based on the entries in the Confidential Reports with regard to the service of the petitioner, during the period from 1st September 1994 to 31 st August 1995 and again from 1st September 1995 to 31st August 1996, with reference to (i) comparative table of figurative assessment of personal qualities by the Initiating Officers; (ii) comparative table of figurative assessment of demonstrated performance and box grading by the Initiating Officers; and (iii) assessment by First Technical Officer.

1.2. Aggrieved by the said proceedings of the first respondent dated 22.3.2001, the petitioner has preferred the above writ petition seeking a writ of Certiorarified Mandamus to call upon the respondents to produce the records, concerning the consideration of the petitioner for promotion to the rank of Brigadier both from the Army HQ and also from the Ministry of Defence and the records in respect of the impugned order of the first respondent, Order No.36501/547/EME/91/MS Compls/708/SC/D(MS) dated 8.1.1998 and Order No.36501/547/EME/91/MS Compls/39/SC/D(MS)/2001, dated 22.3.2001, quash the same and direct the respondents to consider the petitioner's case for promotion to the rank of Brigadier as a fresh case, considering average of the other ACR's as the ACR for the period of 01.09.1994 to 31.8.1995.

2. The impugned order dated 22.3.2001 reads as follows:-
No.36501/547/EME/91/MS Compls/39/SC/D(MS)/2001 Government of India Ministry of Defence New Delhi, dated 22.03.2001.

ORDER

IC-27159P Col KV singh, EME has submitted a Statutory Complaint dated 12th September, 2000 to the Central Government against supersession. He has stated that he has performed his duties with full devotion, dedication and honesty. He states that he has held varied command, staff and instructional appointments and performed tasks with distinction. He has done advanced and specialised courses including the Technical Staff Course, ME (Mech) and Advanced Systems Management from NIIT. He is apprehensive that the CR earned by him while he was commanding officer of 628 EME Bn in 1994-95 under Maj Gen MA Gurbaxani may have caused his rejection. He has stated that he had impugned the same CR (i.e. 09/94-08/95) in his Statutory Complaint dated 10 June, 97 which was rejected. He reiterates that the low figurative assessment made by Maj Gen MA Gurbaxani in some Personal Qualities by awarding him 6/7 pts is inconsistent due to the fact that he had awarded box grading of 8 pts and the pen picture was complimentary thus contradicting his own assessment. He also feels that the assessment made by Maj Gen MA Gurbaxani is also not in consonance with his profile, with particular reference to the other two Crs earned by him in Command Criteria appointments. He further stated that none of the reporting officers have found him lacking in any of the elements of Pqs/DP as may be verified from the detailed complimentary pen picture given by them. He has, therefore, requested that the CR 09/94-08/95 be set aside an grounds of inconsistentcy and he be considered again for promotion to the rank of Brigadier as a fresh case.

2. The Statutory Complaint of the officer has been examined in the light of his career profile, relevant records and analysis/ recommendations of AHQ. It is seen that the impugned CR 09/94-08/95 is well corroborated and moderated report and is in entire conformity with the officer's overall career profile. No interference is warranted in this CR. All other Crs in the reckonable profile are also well corroborated, moderated reports and do not

merit interference.

3. The officer has not been placed in an acceptable grade for promotion to the rank of Brig. due to his overall profile and comparative merit.
4. The Central Govt., therefore, rejects the Statutory Complaint dated 12th September, 2000, submitted by IC-27159P, Col KV Singh, EME against supersession.
By order and in the name of the President.
sd. (Gurdial Singh)
(Under Secretary to the Government of India)"

3. It is well settled in law that, in the case of charges framed in a disciplinary enquiry, the court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Court has no jurisdiction to go into the correctness or truth of the charges. The Court cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review. Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process, vide Union of India v. Upendra Singh, (1994) 3 SCC 357.

4. It is apparent on the face of the impugned proceedings dated 22.3

.2001 that the petitioner was not considered for the promotion from the post of Colonel to Brigadier, as he obtained very low figurative assessment viz., 8 points. It is true that the promotion from the post of Colonel to Brigadier is only a selection post, but not a promotional post and particularly, when it relates to army, due care has to be shown in the matter of such selection process, as it requires to maintain high level of integrity in the interest of the nation at large. Therefore, in such matters, applying the ratio laid down in Union of India vs. Upendra Singh, reported in (1994) 3 SCC 357, there cannot be any second opinion that the power of judicial review of this Court conferred under Article 226 of the Constitution of India, should be sparingly exercised only with respect to the decision making process, but not with reference to the decision taken by the selection authorities in the matter of promotion from the post of Colonel to Brigadier. As the petitioner challenges his non selection to the post of Brigadier, the same cannot be interfered by this Court, by exercising the power conferred under Article 226 of the Constitution of India, unless there is any defect in such decision making process in the matter of non selection of the petitioner for promotion from the post of Colonel to Brigadier.

5. In the instant case, the grading of points under three heads viz.,

(i) comparative table of figurative assessment of personal qualities by the Initiating Officers; (ii) comparative table of figurative assessment of demonstrated performance and box grading by the Initiating Officers; and (iii) assessment by First Technical Officer, awarded to the petitioner, which were taken into consideration for the purpose of selecting the petitioner from the post of Colonel to Brigadier, was concededly not communicated to the petitioner.

6. According to Mr.J.Madanagopal Rao, learned Senior Central Government Standing Counsel, except in the case where the candidate was awarded less than 3 points, such grading of points need not be communicated as per regulation 103 of the Special Army Order, which reads as follows:
103. Assessment contained in a CR will not to communicated to the officer except in the following contingencies:-
(a) When figurative assessment any where in the CR is Low or Below Average (i.e. 3 or less than 3 marks). In such cases extract of figurative assessment (ie 3 or less) will be communicated to the officer.
(b) When the brief comments (pen picture) contains adverse or advisory remarks. In such cases complete pen picture (excluding the box grading) together with comments on Guidance for Improvements will be communicated to the officer. Further, the box grading will also need communication to the officer when assessment is Low or Below Average (3 or less).

7. Regulation 103 referred to above, in my considered opinion, would only mean that award of grades less than 3 points alone would be adverse for the selection from the post of Colonel to Brigadier, which is required to be communicated to the officer concerned to enable him to challenge the same, as otherwise it would be considered adverse to him while considering his case for promotion. Therefore, if the Officer is awarded more than 3 points, but not full points, that by itself would not be a disqualification for his non selection unless he suffers any other disqualification or lacks merits otherwise. In the instant case, since the respondents had taken a definite stand that the grade awarded to the petitioner viz., 8 points need not be communicated to the petitioner, as the figurative assessment, by itself, cannot be a sole reason for the non selection of the petitioner to the post of Brigadier.

8. Since the first respondent in the impugned order dated 22.3.2001 obviously failed to consider the case of the petitioner from the above angle, I am inclined to interfere with the impugned order of the first respondent dated 22.3.2001 and set aside the same. Accordingly, the impugned order dated 22.3.2001 is set aside and the matter is remitted to the first respondent either to pass appropriate orders or to give suitable direction to the second respondent in the matter, as it may not be proper for this Court either to interfere with the confidential reports entered in the service register of the petitioner or to give a direction to select the petitioner to the post of Brigadier, which is impermissible in law, particularly, when the post itself is a selection post for promotion to the post of Brigadier in the defence service and much care has to be taken by the selection authorities in the process of selection.
The writ petition is allowed with the above observation. No costs.

Index : Yes
Internet: Yes
ATR

To,

1. The Secretary,
Ministry of Defence,
Union of India, New Delhi-110011.

2. Military Secretary's Branch/MS(X),
Army Head Quarters, DHQ-P.O.,
New Delhi - 110011.